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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,089	03/12/2004	Paul G. Ritchie	END-5134	7589

27777 7590 02/15/2006
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EXAMINER

JOHNSON III, HENRY M

ART UNIT	PAPER NUMBER
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3739

DATE MAILED: 02/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/799,089	Applicant(s) RITCHIE ET AL.	
	Examiner Henry M. Johnson, III	Art Unit 3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3, 4, 6-10, 12-16 and 20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 4, 6-10, 12-16 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>111805</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The indicated allowability of claims 11, 12, 15 and 19 is withdrawn in view of the newly discovered reference(s) to Dowlatshahi. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 3, 4, 6-10, 12-16 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication US 2004/0092913 to Hennings et al. in view of U.S. Patent 5,222,953 to Dowlatshahi. Hennings et al. teach an improved method and device for treating varicose veins or the greater saphenous vein. The method comprises the use of infrared laser radiation from inside the vessel such that the endothelial cells of the vessel wall are damaged and collagen fibers in the vessel wall are heated to the point where they permanently contract. The device includes a laser delivered via a fiber optic catheter that may

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have frosted or diffusing fiber tips. A motorized pull back device is used, and a thermal sensor may be used to help control the power required to maintain the proper treatment temperature (abstract). The method includes inserting a fiber into the vein through an externalization approach and threaded up to the saphenofemoral junction. The position of the fiber within the vein is noted by observing the red aiming beam of the laser. All laser fibers were withdrawn with a motorized pull-back system at a rate of 1 mm/second. The procedure begins by starting the pull back for about 2 or 3 mm and then turning the laser on (paragraph 0070). The vein treatment length is interpreted as multiple adjacent segments and the variable "pull-back" rates are interpreted as an incremental manner. A non-contact thermal sensor can be located in the laser console and measure tip temperature by measuring the black body infrared radiation profile emitted at the opposite end of the fiber reflected from the treatment site (paragraph 0055). Data obtained from the non-contact thermal sensor equipment can also be used to either servo control delivery of the laser energy to maintain a certain temperature at the treatment site, or the control system (main processor) can be used as a safety device, i.e., to terminate delivery of laser energy if a certain temperature is exceeded (paragraph 0055). The ability to control to a set temperature implies a memory to store the predetermined temperature. Hennings et al. does not specifically teach using a measured temperature to control the withdrawal rate of the energy device. Dowlatshahi discloses a laser interstitial therapy device that measures the temperature of tissue and teaches the method of using the temperature to control the motorized withdrawal of the laser (abstract) to maintain a predetermined therapeutic range. The predetermined range is interpreted as a target temperature. Dowlatshahi further teaches the manual withdrawal of the laser. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the temperature to control the rate of removal as taught by Dowlatshahi in the method of Hennings et al. as it is well known that the

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tissue temperature must be controlled to avoid collateral damage and Dowlatshahi provides an alternative to regulating power to the energy device. It is proper to take into consideration not only the teachings of the prior art, but also the level of ordinary skill in the art. In re Luck, 476 F.2d 650, 177 USPQ 523 (CCPA 1973). Specifically, those of ordinary skill in the art are presumed to have some knowledge of the art apart from what is expressly disclosed in the references. In re Jacoby, 309 F.2d 513, 135 USPQ 317 (CCPA 1962).

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. Dowlatshahi clearly teaches a method for controlling the delivery of energy to tissue using temperature feedback to control the rate of motion of an energy delivery device, the motion being controlled either manually or via a motor.

Conclusion

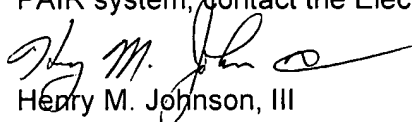
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent 6,033,398 to Farley et al. teaches the collagen fibrils of vein tissue shrink at approximately 70 °C or higher, thereby establishing a target temperature in treating veins.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Henry M. Johnson, III whose telephone number is (571) 272-4768. The examiner can normally be reached on Monday through Friday from 6:00 AM to 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Henry M. Johnson, III
Primary Examiner
Art Unit 3739